

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

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A Questionable Siman

Derech Mishpat High School was hosting a father-and-son learning night. Yaakov and his father arrived early, so they stopped off at Yaakov's shiur room. Yaakov noticed two quarters lying on the floor.

"Can I take the quarters?" Yaakov asked his father.

"There is no requirement of hashavas aveidah on loose coins," said his father. "Most probably, they fell unnoticed along the way and the owner has no way of identifying them. He'll presumably notice the loss shortly afterward and abandon hope of reclaiming them" (C.M. 262:11).

In the corner of the room, they saw another three quarters lying in a triangular arrangement. "What about this?" Yaakov asked his father. "Do you think these also dropped unnoticed?"

"What else could it be?" asked his father.

"Maybe some of the fellows were playing a game and forgot to pick up the coins," Yaakov said. "What are the odds that they landed inadvertently in such a triangular formation?"

"I don't know," said his father. "Aren't you learning Bava Metzia this year?"

"We're learning the first perek (chapter)," said Yaakov. "The laws of hashavas aveidah are in the second perek."

"I'm not sure of the halachah in this case," said his father.

"I expect that Rabbi Dayan will be in the beis medrash when the learning begins," said Yaakov. "His son also learns here. We can ask him!"

"Good idea," said his father.

Yaakov and his father went to the beis medrash. Rabbi Dayan arrived shortly afterward with his son.

Yaakov and his father walked over. "We're sorry to interrupt, but can we ask a halachah question?" Yaakov said.

"Go ahead," said Rabbi Dayan.

"I found three coins in a triangular formation in our shiur room," said Yaakov. "Can I keep them or must I publicize the coins?"

"This arrangement of coins may be considered a siman, so you may not take them for yourself," said Rabbi Dayan. "Rather, you should publicize them."

"What do you mean, 'may be considered'?" asked Yaakov.

"The Gemara (B.M. 25a) questions whether coins arranged in such a fashion serve as a siman — indicating intentional arrangement — or not," explained Rabbi Dayan. "This question remains unresolved in the Gemara. There is a fascinating dispute in the Rishonim how to rule."

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Permitted Seizure?

My position as a secretary was terminated and my employer still owes me around \$2,000. I am concerned that I will never receive that money since my employer has a history of not paying former employees.

Q: Am I permitted to take some money that is in the office without my employer knowing that I took the money, or would that be considered theft?

A: Last week we mentioned the Biblical

prohibition against forcefully taking security from a borrower after the loan was issued or for other debts once a payment plan was made. Even when a payment plan was not arranged there are circumstances in which it may not be permitted to take security for a debt.

However, these limitations apply when the creditor seizes something as security for a loan (mashkon), but when a creditor seizes something as collection for a debt

he is owed, these prohibitions do not apply. Some authorities question whether it is permitted for a creditor to seize something when a beis din must estimate the value of the seized item, and until that time the seized item is considered a mashkon. Conversely, all agree that seizing money is permitted (see Ketzos 97:2, 359:2; Imrei Binah Dayanim 10). In your case seizing money without witnesses is certainly permitted.

A question raised about seizing money is

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"What do they say?" asked Yaakov.

"The Rosh (B.M. 2:8) writes that since this issue remains unresolved we must be stringent, since hashavas aveidah entails a potential prohibition," replied Rabbi Dayan. "Therefore, the finder must publicize the coins. Later in that piece, he writes that whenever there is doubt whether something was placed intentionally or not (safek hinuach), if the area is not secure, the item should be taken and publicized if it has a siman.

"The Rosh (ibid. 2:1) rules similarly in an earlier case, where a person left a certain small quantity of grain on his threshing floor," continued Rabbi Dayan. "The question is whether he intends to return and collect it or he abandoned it for the taking. The Gemara concludes: teiko (unresolved). Since the issue is unresolved, we apply safek d'Oraisa l'chumra (be stringent in a possible Torah requirement), and the finder must publicize the grain."

"Who disagrees?" asked Yaa-

kov.

"The Rambam (Hil. Aveidah 16:2) does not require publicizing the coins," said Rabbi Dayan. "He simply writes that, on account of doubt, one should not take the coins. This is his position (15:1) whenever one is unsure whether an item was left intentionally; even if it has a siman, you should not take it. In the case of the threshing floor, he also writes that one should not take the grain, but if he did, he does not have to publicize it."

"Who is the halachah like?" asked Yaakov.

"The Shulchan Aruch (C.M. 262:12; 260:7, 9) cites the Rambam," replied Rabbi Dayan. "The Rema, however, argues in the final case of safek hinuach that one needs to publicize the item if it has a siman. Most authorities rule, indeed, that you should be stringent in cases of doubt and therefore publicize the coins" (see Hashavas Aveidah K'halachah 1:12; Gra 264:24, 262:22.)

that the Gemara Bava Kama (27b) states that one should not secretly enter his friend's property to retrieve his own possession since he will appear like a thief, rather he should go in forcefully and inform the homeowner that he is seizing his own object. Interestingly, this statement is not cited by some earlier codifiers (Rambam and Shulchan Aruch) but is cited by others (see Pischei Teshuvah 348:1 and Imrei Binah 9). In the event that one will suffer a loss by not seizing an item, it would certainly be permitted for a creditor to seize money that belongs to him (see Tosafos, d.h. elah). In your case, since you anticipate that your employer will deny that he owes you money and will not respond to beis din's summons, it is permitted to seize the amount of money you are owed.

Once you seize the money it

is appropriate that you inform your employer about it. Harav Yaakov Lorberbaum, zt"l (author of Nesivos Hamishpat), in his ethical will (19), addresses this matter and cautions a creditor against not informing the debtor that he seized money to repay the debt he is owed. Even when a creditor is absolutely certain that he is owed money, he must inform the debtor that he seized money since it is possibly that the debtor has a counterclaim against the creditor that was never collected. Therefore, after seizing the money he should inform the debtor of the seizure and offer to resolve any outstanding claims that the debtor may have against him. Additionally, there is a potential chillul Hashem if the debtor discovers that the creditor seized the money without permission; therefore he should be notified that the money was taken.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM

Lost and Found #33

Q: If a tzedakah organization sends me a stamped return envelope, a CD, or a sefer and I am not interested in donating, must I return the item? Can I use it?

A: Since the stamped envelope, CD or sefer was mailed to you intentionally, it is not considered an aveidah; the owner knows where it is. Even if you do not want to donate, you are not required to return the item to them.

In most situations, you are even permitted to use the stamp or gift, since they sent it with the full awareness that only a percentage of people send a donation (C.M. 261:1-4; Pischei Choshen, Geneivah 1:[26]).

However, some are stringent not to use the stamp or an item of significant value (e.g., a sefer) for personal use, especially if payment is clearly expected. Nonetheless, you are not required to return it or notify the or-

ganization. If a long time passes and they do not request the item, you can make yourself a note about it, and then use it. (Hashavas Aveidah K'halachah 12:5; Tzitz Eliezer 21:50).

If mail was mistakenly delivered to you, you should give it to the addressee or return it to the sender.

DID YOU KNOW?

If your child misses a scheduled tutoring session, you may be obligated to pay for the session.

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